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**JAN 10 1941**

**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1940**

**No. 592**

**ALLEN CALCULATORS, INC.,**

*Appellant,*

**vs.**

**THE NATIONAL CASH REGISTER COMPANY AND  
THE UNITED STATES OF AMERICA.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE SOUTHERN DISTRICT OF OHIO.**

**STATEMENT AS TO JURISDICTION.**

**MURRAY SEABOOGOOD,  
FRANK R. BRUCE,  
Counsel for Appellant.**

**PAXTON & SEABOOGOOD,  
SCHWYER & MILLER,  
Of Counsel.**

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**IN THE DISTRICT COURT OF THE UNITED STATES,  
SOUTHERN DISTRICT OF OHIO,  
WESTERN DIVISION**

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**IN EQUITY No. 6802.**

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**THE UNITED STATES OF AMERICA,**  
*Plaintiff,*  
*vs.*

**THE NATIONAL CASH REGISTER COMPANY, ET AL.,**  
*Defendants.*

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**FILED DECEMBER 4, 1943.**

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**JURISDICTIONAL STATEMENT.**

In compliance with Rule 12 of the Supreme Court of the United States, as amended, Allen Calculators, Inc. submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the order and judgment of the District Court entered in this cause on November 16, 1943, denying the motion of Allen Calculators, Inc. for leave to intervene. The petition for appeal was filed on December 4, 1943, and is presented to the District Court herewith, to-wit, on the 4th day of December, 1943.

**Jurisdiction.**

The jurisdiction of the Supreme Court to review by direct appeal the order and judgment entered in this cause is conferred by the Act of February 13, 1925, 43 Stat. 938, 28 U. S. C. sec. 345, commonly known as Sec. 238 of the

Judicial Code, as amended, and by the Act of February 11, 1903, 32 Stat. 823 (as amended by the Act of March 3, 1911, 36 Stat. 1167), 15 U. S. C. Sec. 29, commonly known as the Expediting Act.

### **The Issues and Ruling Below.**

On December 4, 1911, the United States filed an action in equity against The National Cash Register Company and various other defendants requesting an injunction against certain violations of Sections 1 and 2 of the Sherman Anti-Trust Act. On February 1, 1916, a consent decree was entered in the case, wherein the Court found that the various defendants had combined to restrain and had attempted to monopolize interstate and foreign commerce in cash registers in violation of Sections 1 and 2 of the Sherman Anti-Trust Act. Among other things, the decree enjoined The National Cash Register Company and the other defendants:

“Second . . .

“(p) From acquiring ownership or control directly or indirectly, by means of stock ownership or otherwise, of the whole or an essential part of the business, patents, or plant of any competitor engaged in the manufacture or sale of cash registers or other registering devices in interstate or foreign commerce; Provided, that in case any such acquisition is desired, a petition may be presented to this Court stating the reasons therefor, and if the Court upon investigation into all the circumstances of the case and after notice of not less than sixty days to the Attorney General shall determine that such business or patents or plant so desired to be acquired will supplement the plant, patents, machines, or facilities of the defendant corporation and that the acquisition thereof is desired for that purpose and will not substantially lessen competition, then jurisdiction is reserved to pass an order permitting the same upon such terms and conditions as may be right.”

Said decree further provided:

"Third. That jurisdiction of this cause be and is hereby retained for the purpose of enforcing this decree, and for the purpose of enabling the parties to apply to the Court for modification hereof if it be hereafter shown to the satisfaction of the Court that by reason of changed conditions or changes in the statute law of the United States the provisions hereof have become inappropriate or inadequate to maintain competitive conditions in interstate or foreign trade in cash registers or other registering devices in the United States, or have become unduly oppressive to the defendants and are no longer necessary to secure or maintain competitive conditions in such interstate and foreign trade."

On August 20, 1943, The National Cash Register Company filed a petition in the same case, pursuant to paragraph Second (p) of the Decree, asking permission to acquire a controlling stock interest in Allen-Wales Adding Machine Corporation. The latter company manufactures cash drawer machines, accounting machines and adding machines. An answer was filed to this petition by the United States requesting that the petition of The National Cash Register Company be denied. This answer was not filed until November 11, 1943. The contract, subject to court approval, between The National Cash Register Company and Allen-Wales Adding Machine Corporation for stock acquisition was not attached either to the petition of the former or the answer of the Government, and this petitioner had no opportunity to examine it before or when it was introduced at the hearing of the petition for modification of the decree.

On November 15, 1943; the date set by the Court for a hearing on said petition and answer, Allen Calculators, Inc., petitioner herein, at the outset of the proceedings, moved for



leave to intervene and submitted a proposed answer with a notice of hearing, together with a proposed order allowing intervention, which had been served on counsel for The National Cash Register Company and the Government.

Allen Calculators, Inc. alleged that it was engaged in the production of adding machines, bookkeeping machines, statement machines, calculators and cash register combinations for interstate and foreign commerce and that the proposed acquisition by The National Cash Register Company of control of Allen-Wales Adding Machine Corporation would materially and unreasonably restrain interstate and foreign commerce in such articles and tend to create a monopoly in The National Cash Register Company in respect to such articles. The proposed answer requested that the petition of The National Cash Register Company be denied.

The National Cash Register Company objected to this petitioner being allowed to intervene on the ground that the suit was between the United States and The National Cash Register Company, that there was nothing the United States could not raise and was not prepared to raise and that counsel did not see where Allen Calculators, Inc. had any standing as a party to the suit. The Government, through the special assistant to the Attorney General, made no objection to Allen Calculators, Inc. intervening in the case. In fact, it urged in open court the motion for leave to intervene be granted.

The Court thereupon granted Allen Calculators, Inc. leave to intervene and to file its intervening answer conditionally. Thereupon opening statements were made, by their counsel, on behalf of The National Cash Register Company, the Government and the conditional or tentative intervener, Allen Calculators, Inc. Counsel for the last named stated that his client was an independent dealer and it was thought the position of the independent dealer could be

well presented by it and by its president in particular; that client feared the proposed acquisition would be destructive of the business of Allen Calculators, Inc., and that Allen-Wales was in direct competition with National in respect of a "cash register or other registering device" within the meaning of the decree; also, that Allen-Wales was engaged in the manufacture of accounting or bookkeeping machines which acquisition would not "supplement the plant, patents, machines, or facilities of the defendant corporation" because Cash already had such accounting machines; also, that the product of the independents, including Allen Calculators and Allen-Wales, was sold through the dealer system and that the introduction of the agent system in competition by National Cash would be destructive of competition. At a later point, counsel for the proposed intervener called the Court's attention to Section 16 of the Clayton Act (Act of October 15, 1914, c. 323, sec. 16, 38 Stat. 730, 737), and its pertinency to the right of his client to intervene. But later, on November 15, 1943, although counsel for the Government argued that the application to intervene should be allowed, the Court withdrew the leave previously given to intervene conditionally and refused to permit intervention. The Court rendered no written opinion; it stated, in substance, the ground for its action was that the relief requested by The National Cash Register Company's petition affected a decree theretofore entered in the case and that the only parties involved in such controversy were the Government and The National Cash Register Company. A proposed order reciting that intervention was denied on such grounds, was presented by counsel for Allen Calculators, Inc., but this proposed order was refused by the Court which entered an order on November 16, 1943, overruling the motion to intervene without stating the grounds therefor. A copy of the order is attached.

### Questions Are Substantial.

The consent decree of February 1, 1916, did not order the dissolution of the monopoly of The National Cash Register Company in the cash register field. That monopoly continues today largely as it did when the consent decree was entered. The decree, however, enjoins The National Cash Register Company from numerous practices, including the acquisition of competitive businesses, and was largely designed to protect competitors engaged in the manufacture or sale of cash registers or other registering devices in their right to compete with the monopoly established by The National Cash Register Company without interference by it.

Allen Calculators, Inc., while not specifically named in the decree, is within the class whose rights are thus protected by the decree. It is only by virtue of the consent decree and the continuance in full force and effect of all its provisions that smaller manufacturers have any chance of entering or continuing in the field largely monopolized by The National Cash Register Company. Consequently, the decree in a very practical way constitutes an essential safe-guard of the business of any small competitor of The National Cash Register Company, and any such competitor has a vital, direct and pecuniary interest in any application to modify the decree which might result in lessening the protection which it now affords to smaller competitors.

In cases involving proposed modifications of consent decrees in Anti-Trust suits, the Supreme Court of the United States has upheld and approved the right of competitors, whose interest might be affected, to intervene. In *U. S. v. Swift & Co.*, 286 U. S. 106, the defendant requested the modification of a consent decree by removal of a restraint which prohibited the defendant from engaging in the grocery business. The court below granted the application. American Wholesale Grocers Association and National Whole-



sale Grocers Association, which had been permitted to intervene in the court below, filed a separate appeal to the Supreme Court from this decree. The United States also appealed. The Supreme Court said, among other things, at pages 117-118:

"We have said that the defendants are still in a position, even when acting separately, to starve out weaker rivals, or at least that the fear of such abuses, if rational in 1920, is still rational today. \* \* \* Size and past aggressions induced the fear in 1920 that the defendants, if permitted to deal in groceries, would drive their rivals to the wall. Size and past aggressions leave the fear unmoved today. Changes there have been that reduce the likelihood of a monopoly in the business of the sale of meats, but none that bear significantly upon the old-time abuses in the sale of other foods. The question is not whether a modification as to groceries can be made without prejudice to the interests of producers of cattle on the hoof. *The question is whether it can be made without prejudice to the interests of the classes whom this particular restraint was intended to protect.* (Italics ours.)

In *Pipe Line Co. v. U. S.*, 312 U. S. 502, the defendants sought modifications of a consent decree in an anti-trust suit. The suit had principally involved the claim by the Government that Columbia Gas & Electric Corporation and corporations which it controlled had unlawfully interfered with and stifled the competition of the Panhandle Company. The decree, by one of its paragraphs, specifically enjoined interference by the defendant with Panhandle with relation to certain financial arrangements, and provided that Panhandle, upon proper application, might become a party to the suit for the limited purpose of enforcing the rights conferred by Section IV of the decree. On the application to modify, Panhandle sought to intervene, and intervention was denied by the court. Panhandle appealed directly to

the Supreme Court from this order denying intervention. The court held that the order refusing intervention was a final order since it denied to Panhandle the protection secured to it by the decree and, therefore, Panhandle had the right to appeal from this order. The Supreme Court, reversing the lower court, said (p. 506):

"Plainly enough, the circumstances under which interested outsiders should be allowed to become participants in a litigation is, barring very special circumstances, a matter for the *nisi prius* court. But where the enforcement of a public law also demands distinct safeguarding of private interests by giving them a formal status in the decree, the power to enforce rights thus sanctioned is not left to the public authorities nor put in the keeping of the District Court's discretion."

"That is the present case. Panhandle's right to economic independence was at the heart of the controversy. An important aspect of that independence was the extension of its operations to permit sales in Detroit. The assurance of this extension was deemed so vital that it was safeguarded by explicit provisions in the decree."

While it is true that in the *Pipe Line* case the decree itself provided that Panhandle might intervene to protect its rights in the decree, it would seem that the case does not rest in principle upon this narrow ground alone. It is believed that this case stands for the broader proposition that where a consent decree in an anti-trust suit is specifically designed to protect the economic independence of persons not parties to the suit, it is appropriate that they be given the right to intervene to protect the interests thus intended to be safeguarded, and that such intervention should be granted as a matter of right. The determinative factor is not so much whether the decree specifically provides for intervention, but is rather whether the decree is

specifically designed to protect the economic interests of the party who seeks to intervene in order to secure the protection thus intended to be afforded to him. See, also, *U. S. v. St. Louis Terminal*, 236 U. S. 194, 199.

The Federal Rules of Civil Procedure, in Rule 24, governing intervention; provide, in part, as follows:

“(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) When a statute of the United States confers an unconditional right to intervene; or (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof.

“(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

“(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon all parties affected thereby. The motion shall state the grounds therefore and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought . . . .”

Allen Calculators, Inc. was entitled to intervene as a matter of right under subsection (a) (2) of Rule 24. It not only has a vital interest in the proceedings but it will or may be bound by the decree, both as a practical matter and as a

matter of law, and its interest might not be, under the circumstances, adequately presented.

If the District Court should permit the acquisition of control of Allen-Wales by The National Cash Register Company, principles of comity, if not of law, would preclude another court from entertaining a suit by Allen Calculators, Inc. to enjoin such acquisition. *Wabash Railroad Co. v. Adelbert College of the Western Reserve University*, 208 U. S. 609. Thus, as a practical matter, a decree permitting acquisition would be a final adjudication of the rights of Allen Calculators, Inc., without it having a day in court, even though it would be injuriously affected by such acquisition. Not being a party to the proceeding, it would have no right to appeal from an adverse decree even if erroneous. Such a result would, moreover, deprive Allen Calculators, Inc. of any possible right under Section 16 of the Clayton Act to obtain injunctive relief against the proposed acquisition. This statute, with other reasons for allowing intervention, was cited to the Court.

Nor can it be said with certainty that the interests of Allen Calculators, Inc. in keeping the decree intact for its protection were adequately presented by the Government. *Pipe Line Co. v. U. S.*, *supra*. Moreover, the Government in the present case has itself recognized the need of intervention on the part of Allen Calculators, Inc. to protect its interest and those of a class as distinguished from those of the general public. The Government not only made no objection to intervention by Allen Calculators, Inc., but, as before stated, joined in its request.

But the Government took the position, in argument, that its functions in the case were not those of an adversary, but rather that the Attorney General's duty was merely to present facts to the Court from which the Court could form its own independent conclusions. The National Cash Regis-

ter Company's petition was not, therefore, resisted by any party acting in an adversary capacity—seemingly a minimum requirement of adequate representation.

The non-adversary role that the Government assumed was reflected in the manner in which the case was tried. The Attorney General had obtained unsworn letters from about twenty-four Allen-Wales dealers in answer to a kind of questionnaire he had sent to them. The proposed intervenor had no opportunity to see these or comment on them or counterstatements by the Cash Register Company. The Court questioned the propriety of the letters as not under oath. The testimony of these dealers, had it been adduced, would have tended to establish that the proposed acquisition would materially and unreasonably restrain interstate commerce in adding machines, calculators and other devices. Yet, the Government did not call these dealers, one of them in Cincinnati, as witnesses, but merely exhibited their letters to the Court. Certainly adequate representation implies that relevant and helpful testimony available will be introduced in evidence.

When Allen Calculators, Inc. was denied intervention, it was not permitted to have its own counsel instead of Government counsel examine its president as a witness although the Government requested such permission. Thus Allen Calculators, Inc. was denied the right to see exhibits before they were introduced, to cross-examine or to call witnesses. Moreover, the Government ignored the contentions made in the opening statement on behalf of Allen Calculators, Inc. that the so-called "cash drawer" is "a cash register or other registering device" and that the proposed acquisition, in order to be permitted under the terms of paragraph Second (p) of the decree would have to "supplement the plant of the defendant corporation" and that the acquisition of the accounting machine portion of Allen-Wales's busi-



ness would not "supplement the plant—" of Cash, since it was already fully equipped in that line.

In view of the following: the Government's request that Allen Calculators, Inc. be allowed to intervene, that this company will be bound by any decree permitting acquisition; the non-adversary role assumed by the Government and its not presenting material objections suggested in the opening statement for Allen Calculators, Inc., the denial of intervention here constitutes a final appealable order. In addition to reliance on Rule 24(a) (2), it is suggested that petitioner is entitled to intervention of right because so situated as to be adversely affected by a disposition of property, namely, the Allen-Wales stock to be acquired; in the custody of the Court, actually or constructively, within the meaning of Rule 24(a) (3).

Under the statutes above referred to; an appeal from a decree in an anti-trust proceeding must be directly to the Supreme Court. These statutes have been held to apply to appeals from orders denying leave to intervene. *U. S. v. California Co-Operative Canneries*, 279 U. S. 553. *Missouri-Kansas Pipe Line Co. v. U. S.*, 3 Cir., 1909, 108 Fed. (2d) 614, certiorari denied, *Missouri-Kansas Pipe Line Co. v. Columbia Gas & Electric Corporation*, 309 U. S. 687.

The questions presented by this case are important to the litigants and to the public. The appeal presents issues of substance which call for review by the Supreme Court.

Respectfully submitted,

MURRAY SEASONGOOD,  
FRANK R. BRUCE,  
*Attorneys for Petitioner.*

PAXTON & SEASONGOOD,  
SCRIBNER & MILLER,  
*Of Counsel.*

IN THE DISTRICT COURT OF THE UNITED STATES,  
SOUTHERN DISTRICT OF OHIO,  
WESTERN DIVISION

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IN EQUITY No. 6802.

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THE UNITED STATES OF AMERICA,

vs.

*Plaintiff,*

THE NATIONAL CASH REGISTER COMPANY,  
ET AL.,

*Defendants.*

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FILED DECEMBER 10, 1943.

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**SUPPLEMENTAL JURISDICTIONAL STATEMENT.**

Allen Calculators, Inc. files this, its supplemental jurisdictional statement as follows:

On presentation to the Court by Allen Calculators, Inc. on December 6, 1943, of its appeal papers filed December 4, 1943, and of a form of bond for costs on appeal, presentation of same having been postponed to that date at the request of the Court, and counsel for Allen Calculators, Inc. having requested the Court to fix the penalty of said bond for costs in a sum approximating two hundred and fifty dollars (\$250.00), the Court continued the hearing of the petition for appeal until December 10, 1943.

On December 7, 1943, a decree was entered by this Court in the above entitled case granting, under certain conditions contained in said decree, the prayer of the petition of The National Cash Register Company and permitting,

under such conditions, the acquisition of the controlling stock of Allen-Wales Adding Machine Corporation by The National Cash Register Company. Counsel for the United States of America and for The National Cash Register Company, the sole parties to said decree, endorsed said decree and neither of said sole parties excepted to same. Said decree adversely affects this petitioner by a disposition of property in the custody of the Court, namely, the controlling stock of Allen-Wales Adding Machine Corporation, within the meaning of the Federal Rules of Procedure, Rule 24(a) (3). By reason of the proceedings culminating in said decree of December 7, 1943, this petitioner contends it was entitled to intervene as matter of right by said Rule 24(a) (3), as well as by Rule 24(a) (2).

Respectfully submitted,

MURRAY SEASONGOOD,  
FRANK R. BRUCE,  
*Attorneys for Petitioner.*

PAXTON & SEASONGOOD,  
SCRIBNER & MILLER,  
*Of Counsel.*

**APPENDIX "A".**

**IN THE DISTRICT COURT OF THE UNITED STATES,  
SOUTHERN DISTRICT OF OHIO,  
WESTERN DIVISION.**

**IN EQUITY No. 6802.**

**THE UNITED STATES OF AMERICA, *Plaintiff,***

*vs.*

**THE NATIONAL CASH REGISTER COMPANY, et al., *Defendants.***

This cause came on to be heard at the opening of the proceedings on November 15, 1943, on the motion of Allen Calculators, Inc. for leave to intervene and to file an answer attached to said motion, copies of which motion and answer had been served on the United States Attorney General and the attorney for National Cash Register Company, and such motion was argued by counsel for the United States, The National Cash Register Company and movant, on consideration whereof the court overrules said motion; to which ruling Allen Calculators, Inc. excepts.

**CHAUNCEY B. GARVER,**

**JOSEPH S. GRAYDON,**

*Attys. for Nat'l Cash Register Co.*

**ELLIOTT H. MOYER,**

*Special Assistant to Attorney General.*

**M. SEASONGOOD,**

**FRANK R. BRUCE**

*for Allen Calculators, Inc.*

**DRUFFEL, J.**

**APPENDIX "B".****DISTRICT COURT OF THE UNITED STATES,  
SOUTHERN DISTRICT OF OHIO,  
WESTERN DIVISION.****IN EQUITY No. 6802.****FINDINGS AND ORDER—Filed December 7, 1943.****THE UNITED STATES OF AMERICA, *Plaintiff,*****vs.****THE NATIONAL CASH REGISTER COMPANY, et al., *Defendants.***

Pursuant to the requirements of paragraph Second, subdivision (p) of the decree entered in this Court and cause on February 1, 1916, this cause came on to be heard upon the petition of the National Cash Register Company, a Maryland corporation, successor in business to the National Cash Register Company, an Ohio corporation, defendant in this cause, filed herein on the 30th day of August, 1943, said petition praying for authority for the National Cash Register Company, a Maryland corporation, to purchase all or not less than 95% of the outstanding common stock, and all or not less than 50% of the outstanding preferred stock of the Allen-Wales Adding Machine Corporation, a New Jersey corporation, pursuant to a certain contract which the petitioner had entered into with certain stockholders of the Allen Wales Adding Machine Corporation, subject to the approval thereof by this Court. After consideration of said petition, the answer thereto, the evidence, and arguments of counsel, the Court finds:

1. More than 94% of the business of the Allen-Wales Adding Machine Corporation (other than the production of war materiel) has consisted of the manufacture and sale of adding machines, and the Allen-Wales Adding Machine Corporation does approximately 8% of the adding machine business in the United States.



2. The petitioner, the National Cash Register Company, except for an insignificant number of its Class 3000 accounting machines which were converted to function as adding machines, has not engaged in the manufacture or sale of adding machines while its principal competitors in the production and sale of cash registers and accounting machines are engaged in the manufacture and sale of adding machines.

3. In 1941 the Allen-Wales Adding Machine Corporation manufactured and sold 257 commercial bookkeeping machines and such sales constituted 37/10% of the total dollar volume of the Allen-Wales Adding Machine Corporation.

4. In 1941 Allen-Wales Adding Machine Corporation manufactured and sold 327 units of its combination adding and cash drawer machine and such sales constituted approximately 21/10% of its dollar volume.

5. The competition between the accounting machines and cash registers of the National Cash Register Company and the accounting machines and combination adding and cash drawer machines of the Allen-Wales Adding Machine Corporation is not substantial.

6. The business machines manufactured by the National Cash Register Company are sold and distributed through its employees operating under rules, regulations, and instructions promulgated by the National Cash Register Company.

7. The business machines produced by the Allen-Wales Adding Machine Corporation are sold and distributed extensively through distributors who own and operate their own sales agencies, and through independent dealers who operate their own businesses, in the course of which they to a substantial degree make their own determinations as to the policies and practices to be followed in the sale and distribution of business machines. The preservation of such distributors and independent dealers as competitors in the field of distribution of business machines is a matter of public interest.

8. The acquisition by the petitioner of the assets and business of the Allen-Wales Adding Machine Corporation through the purchase from certain stockholders thereof of all or part of its outstanding common stock and all or part of its outstanding preferred stock will supplement the plants, machines, and facilities of the petitioner; and such acquisition is desired by the petitioner for the purpose of supplementing its plants, machines, and facilities, and, upon compliance with the conditions set forth in said Section 9 hereof, such acquisition will not substantially lessen competition.

9. IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the petitioner, the National Cash Register Company, a Maryland corporation, be, and it is hereby, authorized and permitted to acquire the assets and business of the said The Allen-Wales Adding Machine Corporation, a New Jersey corporation, through the purchase of all or part of its outstanding common stock and all or part of its outstanding preferred stock: Provided, however, that such acquisition shall bind the National Cash Register Company to the performance of the following conditions:

A. The operations of Allen-Wales Adding Machine Corporation shall be maintained as a separate division of the National Cash Register Company, or as a separate corporation, with a complete and independent accounting system until at least January 1, 1950.

B. All existing contracts between the Allen-Wales Adding Machine Corporation and dealers and distributors of its products shall be continued in full force and effect by National Cash Register Company at least until January 1, 1950; provided that any such contract may be terminated prior to January 1, 1950: (1) with the consent of the dealer or distributor who is a party thereto, or (2) in good faith and for good cause based on substantial breach of such contract by such dealer or distributor. No termination for cause of such an existing contract shall be effective until the dealer or distributor involved has been given at least 30 days' notice of intention to terminate his distributor-

ship or dealership contract, and each such notice shall include a statement of the cause relied upon for such termination. Any such contract may be modified prior to January 1, 1950, with the consent of the dealer or distributor involved, provided, however, that any such contract may be modified or terminated prior to January 1, 1950, without the consent of the dealer or distributor involved if permitted by the terms thereof but only to the extent necessary to permit petitioner, through its regularly established agencies and representatives, to solicit sales, sell and service products of The Allen-Wales Adding Machine Corporation in territory now covered by any such contract without any obligation to pay to or share commission or discounts with any such dealer or distributor resulting from any such soliciting, selling or servicing; and provided further that, upon any such termination, the dealer or distributor involved therein shall be offered a new contract identical with his existing contract except for the elimination therefrom of any exclusive or preferred rights in the territory covered thereby, as against such soliciting, selling and servicing by regularly established agencies and representatives of the petitioner, and such new contracts shall be subject to the provisions of this Order. Nothing in this Order shall be deemed to prejudice any right which any dealer or distributor has under any existing contract.

C. Parts for repairing or servicing the products of the Allen-Wales Adding Machine Corporation shall be made available by the petitioner to the dealers and distributors of products of the Allen-Wales Adding Machine Corporation at least until January 1, 1954, for purchase or handling by such dealers and distributors.

D. The affairs of the Allen-Wales Adding Machine Corporation or the Allen-Wales Division of the National Cash Register Company, as the case may be, shall, during the periods that the provisions of this Order are operative, be conducted so as to exercise

the utmost good faith in dealing with and in making improvements and servicing information available to existing dealers and distributors of Allen-Wales products and in making Allen-Wales products, accessories, and parts available to such dealers and distributors.

E. The purpose and intent of these conditions is to assure to existing dealers and distributors of products, including adding machines, bookkeeping machines, and cash drawer machines and accessories therefor, manufactured by the Allen-Wales Adding Machine Corporation that such products will remain available to them for approximately a five-year period after the resumption of substantially normal production of business machines; and, in the event that such resumption does not occur prior to January 1, 1945, the United States of America may petition this Court for an extension of the date specified in subsections A and B above. In the event any such extension is granted, a corresponding extension shall be made in the date provided in subsection C, above.

F. No unfair or unreasonable discrimination shall be practiced against the dealers and distributors of the Allen-Wales Adding Machine Corporation in connection with the prices, terms, conditions, and procedures upon which Allen-Wales products, parts, accessories, and servicing information are, pursuant to this Order, made available to its existing dealers and distributors, and such prices, terms, conditions, and procedures shall not, directly or indirectly, unfairly or unreasonably discriminate against such dealers and distributors.

10. Jurisdiction over the matters contained in the petition and over the provisions and conditions of this Order is hereby retained for the purpose of enabling the Attorney General or the petitioner to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of

this Order, for the modification thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof. Jurisdiction is also retained for the purpose of enabling any dealer or distributor of the Allen-Wales Adding Machine Corporation to apply to this Court for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Order, or for the enforcement of compliance therewith, in relation to any matter in which such dealer or distributor has an interest.

11. For the purpose of securing compliance with this Order, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or an Assistant Attorney General, be permitted (1) access during the office hours of the petitioner, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the petitioner, relating to any matters contained in this Order; (2) without restraint or interference from the petitioner, to interview officers or employees of the petitioner, or of the Allen-Wales Adding Machine Corporation, who may have counsel present, regarding any such matters; and (3) the petitioner, on such request, shall submit such reports in respect of any such matters as may from time to time be reasonably necessary for the proper enforcement of this Order, provided, however, that information obtained by the means permitted in this paragraph shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, or in connection with securing compliance with this Order.

12. The terms and conditions of the final decree entered in this Court and cause on February 1, 1916, shall remain in full force and effect.

13. This order shall not be deemed to determine or adjudicate the validity of any patent owned by the petitioner or the Allen-Wales Adding Machine Corporation nor the



legality or validity of any patent license agreement or arrangement to which the petitioner or the Allen-Wales Adding Machine Corporation may be a party.

14. The costs of this proceeding shall be taxed to the petitioner.

JOHN H. DRUFFEL,  
*United States District Judge.*

Approved as to form: .

GRAYDON, HEAD & RITCHEY,  
*Attorneys for Petitioner.*

WENDELL BERGE,  
*Assistant to the Attorney General.*

ERNEST S. MEYERS,  
ELLIOTT H. MOYER,  
*Special Assistants to the  
Attorney General.*

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